



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2013

Ms. Karla Schultz
Counsel for Pflugerville Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
505 East Huntland Drive, Suite 600
Austin, Texas 78752

OR2013-21858

Dear Ms. Schultz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 508590.

The Pflugerville Independent School District (the "district"), which you represent, received a request for all information pertaining to the requestor's termination from the district. You state the district has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, state and local education authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). In this instance, you have submitted unredacted education records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational

¹A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

authority in possession of such records.² We will, however, consider the applicability of the district's claimed exceptions for the submitted information.

Next, we note the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). The information at issue consists of a completed internal investigation by the district and must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. Although you assert this information is excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information at issue under section 552.111. However, you also raise section 552.101 of the Government Code, which protects information made confidential under law, and section 552.108 of the Government Code. As previously noted, section 552.022(a)(1) states information subject to that section may be withheld under section 552.108. As such, we will consider the applicability of sections 552.101 and 552.108 to the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which applies to investigations of alleged or suspected child abuse or neglect. *See* Fam. Code § 261.201. Although you raise section 261.201(a) for Exhibit 3, we note the incident at issue occurred at a child care facility that is regulated by the Texas Department of Family and Protective Services ("DFPS") under chapter 42 of the Human Resources Code. Section 261.201(h) provides section 261.201 "does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code." *Id.* § 261.201(h). Thus, in accordance with section 261.201(h), section 261.201(a) is not applicable Exhibit 3 and the district may not withhold it under section 552.101 on this basis. *See id.* § 261.201(h).

Section 552.101 of the Government Code also encompasses section 40.005 of the Human Resources Code and section 745.8485 of title 40 of the Texas Administrative Code. Section 40.005 authorizes the Texas Department of Family and Protective Services ("DFPS") to adopt rules for the purpose of preserving the confidentiality of information concerning child abuse and neglect and provides in part:

²In the future, if the district does not obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

(a) [DFPS] shall establish and enforce rules governing the custody, use, and preservation of [DFPS] records, papers, files, and communications.

(b) [DFPS] shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a [DFPS] service or to an investigation the [DFPS] conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of [DFPS] programs and must comply with applicable state and federal law and [DFPS] rules.

Hum. Res. Code § 40.005. In accordance with section 40.005, DFPS promulgated section 745.8485 to make child care facility license investigations confidential. Section 745.8485(a) provides “[a]ll investigations are confidential until [DFPS] complete[s] the investigation and make[s] a finding.” 40 T.A.C. § 745.8485(a).

You state Exhibit 3 was provided by the district to DFPS in accordance with DFPS’s investigation of possible child abuse or neglect. Additionally, you state, and submit supporting documentation demonstrating, the investigation being conducted by DFPS is pending. Based on these representations and our review, we conclude the district must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 745.8485(a) of title 40 of the Texas Administrative Code.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsay E. Hale". The signature is fluid and cursive, with the first name "Lindsay" being the most prominent part.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 508590

Enc. Submitted documents

c: Requestor
(w/o enclosures)